

1. The preliminary hearing Order should be affirmed.
2. Claimant developed an umbilical hernia and believes that it was caused from helping with inventory at work on October 23, 2000, when she lifted 20 to 30 totes weighing approximately 20 pounds each. While lifting the totes, claimant did not experience any symptoms that indicated that she had injured herself. Further, claimant did not notice any abdominal pain until the first part of November 2000. Claimant testified that she did no other lifting between October 23 and when she began experiencing the abdominal pain.
3. On November 6, 2000, when visiting Dr. Robin Durrett for other reasons, the doctor discovered that claimant had an umbilical hernia and recommended immediate surgery. Before seeing the doctor, claimant had no inkling that she had a hernia. The morning after seeing Dr. Durrett, claimant reported the hernia to the store manager. At that time, claimant reported that she believed the hernia had been caused by work.
4. On November 14, 2000, claimant underwent hernia surgery. The doctor released claimant to return to work on December 4, 2000, with no heavy lifting for three weeks. After returning to work for approximately two days, claimant terminated her employment with respondent.
5. Claimant testified that she did no lifting other than those 20 to 30 totes at work between October 23 and the surgery on November 14. But on cross-examination, claimant admitted that she moved to a new residence during the last two weeks of October 2000. Claimant also testified that she did not personally move anything during that move as her roommate did all of the work. The Judge found that testimony was not credible.
6. The Workers Compensation Act places the burden of proof on injured workers to establish their right to compensation.¹ And that burden is to persuade the trier of facts by a preponderance of the credible evidence that their position on an issue is more probably true than not when considering the whole record.²
7. Based upon the record compiled to date, the Board affirms Judge Moore's finding and conclusion that claimant has failed to prove that her hernia was caused by her work. The claimant did not experience any symptoms in her abdomen until the first part of November, nor did she experience any symptoms while working that would indicate that she had sustained any abdominal injury. At this juncture of the claim, the Board agrees with the Judge that relating the hernia to claimant's work with respondent is mere conjecture.

¹ K.S.A. 44-501(a).

² K.S.A. 44-508(g).

8. As provided by the Act, preliminary hearing findings are not binding but subject to modification upon a full hearing of the claim.³

WHEREFORE, the Board affirms the February 15, 2001 preliminary hearing Order.

IT IS SO ORDERED.

Dated this ____ day of March 2001.

BOARD MEMBER

c: Robert R. Lee, Wichita, KS
John F. Carpinelli, Topeka, KS
Bruce E. Moore, Administrative Law Judge
Philip S. Harness, Director

³ K.S.A. 44-534a(a)(2).